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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,347	10/23/2001	Paul Antonacci	2000-1550-CIP	6459
30184	7590	12/01/2004	EXAMINER	
MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.			DURAND, PAUL R	
1899 POWERS FERRY ROAD			ART UNIT	
SUITE 310			PAPER NUMBER	
ATLANTA, GA 30339			3721	

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/037,347

**Applicant(s)**

ANTONACCI, PAUL

**Examiner**

Paul Durand

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3-15 and 17-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-15 and 17-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 March 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 3,4,7-12,15,17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daller (US 2,14,3844) in view of Madderom (US 5,912,197).

In regard to claims 3 and 11, Daller discloses the invention substantially as claimed including forming a prepared sheet by bringing the edges of two sheet sections 12, into contact with a film section 14 to form a sheet, which is capable of being folded along a central axis and is capable of being sealed to form a bag (see Fig. 4, C1, L16-22, C2, L28 – C3, L7 and C3, L68 – C4, L4). What Daller does not disclose, but is capable of doing, is being sealed with a thermoplastic sealing strip. However, Madderom teaches that it is old and well known in the art of manufacturing a mesh package to provide thermoplastic strips 14 placed on the mesh material prior to sealing and forming a bag with at least one opening for the purpose of forming a bag and increasing the strength of a seal area (see Figs. 1-5,16,17, C4,L7-31 and C8,L27-38). Therefore, it would have been obvious to one having ordinary skill in the art to have modified the invention of Daller with the forming and sealing means as taught by Madderom for the purpose of forming a bag and increasing the strength of a seal area. Furthermore, while Daller and Madderom disclose the use of a polyolefin central film

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area, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a label area manufactured from a polyolefin material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Lastly, it has been held that an element is "capable of" performing function is not a positive limitation, but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

In regard to claims 4 and 12, the modified invention of Daller discloses the invention as claimed including fabric sheets 12, comprised of cellulose materials, sealed to opposite edges of film 11 (see Fig. 3).

In regard to claims 7 and 15, Daller discloses the invention substantially as claimed including a polymeric portion that can serve as a label (see Fig. 3 and C1, L16-22).

In regard to claim 8-10,17 and 18, Madderom, in an alternative embodiment of his package, teaches that it is old and well known in the art to provide plural thermoplastic polyethylene sealing strips, arranged on either side of a thermoplastic fabric section and perpendicular to a fold axis for the purpose of efficiently sealing the seams of a bag (see Figs. 1-5,16,17, C4,L7-31 and C8,L27-38).

3. Claims 19,5,6,13,14 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daller and Madderom in further view of Wikle (US 2,774,402).

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In regard to claim 19, Daller discloses the invention substantially as claimed including forming a prepared sheet by bringing the edges of two sheet sections 12, into contact with a film section 14 to form a sheet, which is capable of being folded along a central axis and is capable of being sealed to form a bag (see Fig. 4, C1, L16-22, C2, L28 – C3, L7 and C3, L68 – C4, L4). What Daller does not disclose, but is capable of doing, is being sealed with a thermoplastic sealing strip. However, Madderom teaches that it is old and well known in the art of manufacturing a mesh package to provide thermoplastic strips 14 placed on the mesh material prior to sealing and forming a bag with at least one opening for the purpose of forming a bag and increasing the strength of a seal area (see Figs. 1-5, 16, 17, C4, L7-31 and C8, L27-38). Furthermore, Wikle teaches that it is old and well known in the art to provide a formed package sheet that is comprised of a fabric section that possesses a width that is at least equal to the width of the other fabric section and the film combined for the purpose of manufacturing a bag with a label section (see Fig. 1). Therefore, it would have been obvious to one having ordinary skill in the art to have modified the invention of Daller with the forming and sealing means as taught by Madderom and Wikle for the purpose of forming a bag and increasing the strength of a seal area. Still Furthermore, while Daller and Madderom disclose the use of a polyolefin central film area, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a label area manufactured from a polyolefin material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Lastly, it has been held that an element is "capable of" performing function is not a positive limitation, but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

In regard to claims 5 and 13, Wikle teaches that it is old and well known in the art to provide a sheet that is comprised of a fabric section that possesses a width that is at least equal to the width of the other fabric section and the film combined for the purpose of manufacturing a bag with a label section (see Fig.1).

In regard to claim 20, the modified invention of Daller discloses the invention as claimed including fabric sheets 12, comprised of cellulose materials, sealed to opposite edges of film 11 (see Fig. 3).

In regard to claims 6,14 and 21, Wikle teaches that it is old and well known in the art to provide a fabric section that possesses a cross woven net like thermoplastic fabric for the purpose of manufacturing a bag with ventilation means for the purpose of manufacturing a mesh bag with a label section (see Fig.1).

In regard to claim 22, Daller discloses the invention substantially as claimed including a polymeric portion that can serve as a label (see Fig. 3 and C1, L16-22).

In regard to claims 23-25, Madderom, in an alternative embodiment of his package, teaches that it is old and well known in the art to provide plural thermoplastic polyethylene sealing strips, arranged on either side of a thermoplastic fabric section and perpendicular to a fold axis for the purpose of efficiently sealing the seams of a bag (see Figs. 1-5,16,17, C4,L7-31 and C8,L27-38).

4. Claims 26,27,29-35 and 37-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daller in view of Madderom and in further view Daniels (US 2,428,266).

In regard to claims 26 and 34, Daller discloses the invention substantially as claimed including forming a prepared sheet by bringing the edges of two sheet sections 12, into contact with a film section 14 to form a sheet, which is capable of being folded along a central axis and is capable of being sealed to form a bag (see Fig. 4, C1, L16-22, C2, L28 – C3, L7 and C3, L68 – C4, L4). What Daller does not disclose, but is capable of doing, is being sealed with a thermoplastic sealing strip and the continuous feed of the bag material. However, Madderom teaches that it is old and well known in the art of manufacturing a mesh package to provide thermoplastic strips 14 placed on the mesh material prior to sealing and forming a bag with at least one opening for the purpose of forming a bag and increasing the strength of a seal area (see Figs. 1-5,16,17, C4,L7-31 and C8,L27-38). Furthermore, Daniels teaches that it is old and well known in the art to manufacture a package comprised of various sections from a continuous stream of material coming from rolls 50 and 52 for the purpose of increasing bag manufacturing throughput (see Fig. 10). Therefore, it would have been obvious to one having ordinary skill in the art to have modified the invention of Daller with the forming and sealing means as taught by Madderom for the purpose of efficiently and continuously forming a bag and increasing the strength of a seal area. Still furthermore, while Daller and Madderom disclose the use of a polyolefin central film area, it would have been obvious to one having ordinary skill in the art at the time the invention was

made to provide a label area manufactured from a polyolefin material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of it's suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Lastly, it has been held that an element is "capable of" performing function is not a positive limitation, but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

In regard to claims 27 and 35, the modified invention of Daller discloses the invention as claimed including fabric sheets 12, comprised of cellulose materials, sealed to opposite edges of film 11 (see Fig. 3).

In regard to claims 29 and 37, Wikle teaches that it is old and well known in the art to provide a fabric section that possesses a cross woven net like thermoplastic fabric for the purpose of manufacturing a bag with ventilation means (see Fig.1).

In regard to claims 30 and 38, Daller discloses the invention substantially as claimed including a polymeric portion that can serve as a label (see Fig. 3 and C1, L16-22).

In regard to claims 31-33 and 39-41, Madderom teaches that it is old and well known in the art of composite bag manufacturing to provide a transverse strips 14, that are regularly spaced along the web, onto a bag 10, that functions as the transverse seal for two separate bags as the film web is sealed and cut by device 44, where the combined seal size has a width that is larger than the seals used to seal the edges of a



single bag for the purpose of manufacturing a bag with a reinforced seal in an efficient manner.

5. Claims 42,28,36 and 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Daller in view of Madderom, in further view of Wikle and in further view Daniels.

In regard to claim 42, Daller discloses the invention substantially as claimed including forming a prepared sheet by bringing the edges of two sheet sections 12, into contact with a film section 14 to form a sheet, which is capable of being folded along a central axis and is capable of being sealed to form a bag (see Fig. 4, C1, L16-22, C2, L28 – C3, L7 and C3, L68 – C4, L4). What Daller does not disclose, but is capable of doing, is being sealed with a thermoplastic sealing strip and the continuous feed of the bag material. However, Madderom teaches that it is old and well known in the art of manufacturing a mesh package to provide thermoplastic strips 14 placed on the mesh material prior to sealing and forming a bag with at least one opening for the purpose of forming a bag and increasing the strength of a seal area (see Figs. 1-5,16,17, C4,L7-31 and C8,L27-38). Still furthermore, Wikle teaches that it is old and well known in the art to provide a formed package sheet that is comprised of a fabric section that possesses a width that is at least equal to the width of the other fabric section and the film combined for the purpose of manufacturing a bag with a label section (see Fig.1). Still furthermore, Daniels teaches that it is old and well known in the art to manufacture a package comprised of various sections from a continuous stream of material coming from rolls 50 and 52 for the purpose of increasing bag manufacturing throughput (see

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Fig. 10). Therefore, it would have been obvious to one having ordinary skill in the art to have modified the invention of Daller with the forming and sealing means as taught by Madderom, and the feeding means as taught by Daniels for the purpose of efficiently forming a bag and increasing the strength of a seal area. Still Furthermore, while Daller and Madderom disclose the use of a polyolefin central film area, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a label area manufactured from a polyolefin material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of it's suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Lastly, it has been held that an element is "capable of" performing function is not a positive limitation, but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchinson*, 69 USPQ 138.

In regard to claims 28 and 36, Wikle teaches that it is old and well known in the art to provide a sheet that is comprised of a fabric section that possesses a width that is at least equal to the width of the other fabric section and the film combined for the purpose of manufacturing a bag with a label section (see Fig.1).

In regard to claim 43, the modified invention of Daller discloses the invention as claimed including fabric sheets 12, comprised of cellulose materials, sealed to opposite edges of film 11 (see Fig. 3).

In regard to claim 44, Wikle teaches that it is old and well known in the art to provide a fabric section that possesses a cross woven net like thermoplastic fabric for the purpose of manufacturing a bag with ventilation means (see Fig.1).

In regard to claim 45, Daller discloses the invention substantially as claimed including a polymeric portion that can serve as a label (see Fig. 3 and C1, L16-22).

In regard to claims 46-48, Madderm teaches that it is old and well known in the art of composite bag manufacturing to provide a transverse strips 14, that are regularly spaced along the web, onto a bag 10, that functions as the transverse seal for two separate bags as the film web is sealed and cut by device 44, where the combined seal size has a width that is larger than the seals used to seal the edges of a single bag for the purpose of manufacturing a bag with a reinforced seal in an efficient manner.

### ***Response to Arguments***

6. Applicant's arguments filed 7/26/2004 have been fully considered but they are not persuasive.

Regarding claims 3-~~25~~<sup>15, 17-25</sup>, Applicant first argues that the label of Ferre does not teach applicant's invention since it is folded into an envelope prior to attachment to the mesh bag, which also wastes material. The examiner disagrees with this argument. First, the teaching of Ferre has been rescinded not due to applicant's arguments, but rather to the citation of the court case of *Leshin* regarding the preferred use of material. Second, while the use of material may be pertinent to the patentable bag itself, the examiner asserts that choice of material is dependent upon its type of use. The addition of Ferre in the Office Action mailed 3/26/2004 was to show applicant that it is old and well known to provide a label manufactured from polyolefin. Furthermore, the examiner disagrees with the applicant's argument that the band taught by Ferre teaches away

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from applicant's invention. Ferre is indefinite in what actually determines a large load (A bag of onions? A bag of bricks?). Irregardless, the teaching of Ferre was solely used to show a polyolefin label on a mesh bag is well known.

Applicant further argues that his claims, as amended, overcome the rejection. The examiner disagrees and asserts that the method of making the bag (joining of sections together with a central section) is old and well known as shown by Daller.

Applicant further argues that the teaching of Wikle does not teach applicant's invention since Wikle discloses a perforated region instead of a mesh and the use of a cellulose based material. The examiner disagrees. The teaching of Wikle was used to show applicant that the arrangement of the mesh pattern on the bag, with a central label portion in the center as well as the overall surface area of mesh to non-mesh area is well known in the art. The teaching of Wikle is not relied on for sealing, as that is relied on in Madderom, though the examiner would argue that bag of Wikle is *capable* of being sealed with a thermoplastic strip given enough heat and pressure. Furthermore, the examiner disagrees with applicant's definition of mesh and would assert that a mesh is comprised of a group of perforate regions.

Applicant further argues that none of the references teach the use of a thermoplastic sealing strip. While the examiner does agree, the teaching of Madderom is cited to show applicant that it is old and well known in the art of bag making to utilize thermoplastic sealing strips to create a reinforced seal area.

Regarding claims 26-48, Applicant's argues are essentially the same as for claims 3-15 and 17-25, with the exception that the combined references do not teach

the manufacture of applicant's invention with a continuous feed of material. The examiner disagrees. The rejection of claims 26-48 were based on the rejection of claims 3-15 and 17-25 with the addition of Daniels to show applicant that it is well known to continuously feed material to a package making machine.

Therefore, for the reasons indicated above, the rejection is deemed proper.

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand  
November 24, 2004



EUGENE KIM  
PRIMARY EXAMINER